IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.10.2018

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 39684 of 2016
and W.M.P.No.33951 of 2016

Sri Ramachandra Educational and Health Trust,
Represented by its Managing Trustee,
New No.24 (Old No.25) Sir C.V.Raman Road,
Alwarpet, Chennai – 600 018. ... Petitioner

Vs

1. The Government of Tamil Nadu,
   Represented by its Secretary,
   Municipal Administration and Water Supply Department,
   Fort St.George,
   Chennai – 600 009.

2. The Commissioner,
   Greater Chennai Corporation,
   Chennai – 600 003.

3. The Deputy Commissioner (R&F),
   Greater Chennai Corporation,
   Ripon Buildings,
   Chennai – 600 003.

4. The Zonal Officer,
   Zonal Officer-XI,
   Greater Chennai Corporation,
   123, Arcot Road, Valasaravakkam,
   Chennai – 600 087. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the third respondent in the order dated 15.02.2016 in reference no.R.D.C.No.G1/2296/2015, quash the same and consequently direct the respondents to assess, demand and collect property tax from the petitioner trust only after implementing the exemption granted under section 101 (c) & (e) of the Chennai City Municipal Corporation Act, 1919.

For Petitioner : Mr.Abishek Jenasenan

For Respondents : 1)Mr.C.Mani Shankar
Additional Advocate General
assisted by
Mr.T.C.Gopala Krishnan for R2 to R4

2) Mr.R.S.Selvam
Government Advocate for R1

ORDER

The order of the 3rd respondent dated 15.02.2016 in respect of the payment of property tax by Greater Chennai Municipal Corporation is under challenge in this writ petition.

2. The claim of the writ petitioner for grant of exemption from payment of property tax has been rejected by the respondents on the ground that the proposal sent to the Government. In this regard, the response is awaited and this apart, as per the Chennai City Municipal Corporation Act, Sec.414(A) the exemption was not granted to the writ petitioner institutions and therefore, the petitioner is liable to pay the

property tax as assessed by the competent authorities of the Greater Chennai Corporation.

3. The learned counsel for the writ petitioner made a submission that the petitioner is Sri Ramachandra Educational and Health Trust running a medical institution as well as hospitals and other educational institutions and providing various facilities inside the campus. The learned counsel for the petitioner is of an opinion that the petitioner institutions were originally part of Karambakkam Village Panchayat wherein the property tax was paid regularly as per the assessment made by the Panchayat. The Government issued orders in G.O.Ms.No.280, Municipal Administration and Water Supply (Election), dated 09.11.2010 bringing the Karambakkam Village within the Chennai Corporation limit with effect from 25.10.2011 and after passing of the said Government orders, the writ petitioner is coming within the jurisdiction of the Chennai Corporation and therefore, the petitioner is entitled to avail the benefit of an exemption provided under Section 101 of the Chennai City Municipal Corporation Act 1919. The demand notice issued by the 4th respondent dated 01.03.2012 was responded by the writ petitioner by submitting a detailed representation on 30.03.2012 and on 12.04.2012. The petitioner has stated that they are exempted from payment of the property tax to the Chennai Corporation, in view of the

benefit granted under Section 101 of the Chennai City Municipal Corporation Act, 1919. The learned counsel appearing for the petitioner states that the writ petitioner is paying the property tax as per the assessment made by the erstwhile Panchayat. The revised tax as of now imposed is inapplicable to the petitioner's Institution. It is mainly contended that as per Section 101 of the Chennai City Municipal Corporation Act, the exemption was granted to the writ petitioner and therefore, they are not liable to pay the property tax to Greater Chennai Corporation.

4. The learned counsel appearing for the respondent/Chennai Corporation rebutted the contentions by stating that no doubt, Section 101 provides an exemption to the Educational Institutions. However, even for availing the benefit of exemption under Section 101, the petitioner should approach the Corporation Council for passing appropriate orders. In the absence of any specific order by the respondents, the exemption can never be claimed as an automatic one. Thus, the writ petitioner is liable to pay the property tax in accordance with the provisions of the Act. It is further contended that the writ petitioner Institution was originally assessed by the Karambakkam Village Panchayat and they are paying the property tax as per the assessment made by the Panchayat.

5. Section 414 (A) of the Chennai City Municipal Corporation Act, 1919, reads as under:

> ***414A. Transitional provision on the extension of the area of the city.*** *- (1) When the area of the city is extended, all property, all rights of whatever kind, used, enjoyed or possessed by, and all interests of whatever kind owned by, or vested in, or held in trust by or for the municipal council, panchayat union council or villlage panchayat concerned, of the extended area as well as all liabilities legally subsisting against such municipal council, panchayat union council or village panchayat, as the case may be, on and from the date of the Notification, by which such extension of the city is declared, shall, subject to such directions as the Government may, by general or special order, give is this behalf, vest with the corporation.*
>
> *(2) All arrears of taxes or other payments by way of composition for a tax, or due for expenses or compensation or otherewise, except such arrears or payments in respect of water supply and sewerage services, due to such municipal council, panchayat union council or village panchayat, as the case may be, on the date of such Notification, shall be recovered as if they had accrued to the corporation and shall be recovered as if such arrears or payments had become due under the provisions of this Act.*
>
> *(3) All taxes, fees and duties, except in respect of water supply and sewerage services, which immediately before the date of such Notification, were being levied by such municipal council, panchayat union council or village panchayat, as the case may*

be, shall be deemed to have been levied by the corporation under the provisions of this Act and shall continue to be in force accordingly until such taxes, fees and duties are revised, cancelled or superseded by, anything done or any action taken under this Act.

(4) All proceedings except in respect of water supply and sewerage services, taken by, or against such municipal council, panchayat union council or village panchayat or authority or any person under the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920) or the Tamil Nadu Panchyats Act, 1994 (Tamil Nadu Act 21 of 1994), as the case may be, shall be continued by, or against, the corporation, authority or person as if such proceedings had been commenced under the provisions of this Act.

(5) Any action except in respect of water supply and sewerage services, taken under the Tamil Nadu Act V of 1920 or the Tamil Nadu Act 21 of 1994, as the case may be, by any authority before the date of such Notification, shall be deemed to have been taken by the authority competent to take such action under this Act as if this Act had then been in force.

(6) Notwithstanding anything contained in this Act, every officer or employee except in connection with water supply and sewerage services, who, immediately before the date of such Notification, was in the service of such municipality, town panchayat or village panchayat, as the case may be, shall, on and from the date of such Notification, be deemed to be an officer or employee of the corporation:

Provided that-

(a) the terms and conditions applicable to such officer or employee consequent on his absorption in the service of the corporation shall not be less favourable than those applicable to such officer or employee immediately before the date of such Notification, as regards pay and allowances, leave, pension, gratuity, provident fund and age of superannuation; and

(b) the service rendered by such officer or employee under such municipality, town panchayat or village panchayat, as the case may be, upto the date of such Notification, shall be deemed to be the service under the corporation and he shall be entitled to count that service for the purpose of increments, leave, pension, provident fund and gratuity.

6. Thus, the writ petitioner Institution falls within the jurisdiction of the Chennai City Municipal Corporation only after the issuance of the G.O.Ms.No.280, Municipal Administration and Water Supply (Election), dated 09.11.2010. Thus, the exemption can never be an automatic one, in the absence of obtaining an order from the Corporation or from the Government. In this regard, it is contended that the exemption already granted to the Institutions within the core City area alone was allowed to continue and in respect of the area which were incorporated pursuant to the Government order in G.O.Ms.No.280, Municipal Administration and Water Supply (Election), dated 09.11.2010, the Corporation is bound to collect the tax . Thus, there is no irregularity in respect of the assessment

made by the Corporation for collection of property tax from the writ petitioner Institution.

7. This Court is of an opinion that two circumstances were raised by the respective parties to the lis on hand. Firstly, it is contended that under Section 101 of the Chennai City Municipal Corporation Act, 1919, an exemption was granted to the educational Institution and therefore, the said provision must be automatically applicable to all the Institutions in the City. By citing the said provisions, the learned counsel for the petitioner states that the petitioner Institution is not liable to pay the property tax as assessed by the Chennai Corporation. The second circumstances would be that grant of exemption is not automatic and a specific order must be passed by the competent authority. In this regard, there cannot be any assumption of payment of property tax by the assesses, in the absence of order passed by the competent authority. Admittedly, the petitioner Institution was incorporated by virtue of the Government order issued in G.O.Ms.No.280, Municipal Administration and Water Supply (Election), dated 09.11.2010 within the Chennai City Municipal Corporation. In respect of the Institution which was included from the year 2011, there was no specific orders for grant of exemption. Neither the Government nor the Corporation granted any such exemption in respect of the Institutions fall

within the area, which was included by virtue of the government order in G.O.Ms.No.280, Municipal Administration and Water Supply (Election), dated 09.11.2010. In the absence of any such specific order granting exemption to these educational Institutions, assessments made by the erstwhile Municipality or by the Panchayat is to be collected by the Corporation. If at all, the petitioner Institution claims any exemption by citing the provisions contemplated under the Act, they are bound to file an application before the authorities competent and the said application are to be considered on merits and in accordance with law and the decision is to be taken by the Corporation. At the outset, in the absence of any specific order granted by the authority for grant of exemption to the Educational Institution, the payment of property tax cannot be avoided. There cannot be any implied exemption or assumed exemption in this regard.

8. This being the principles to be followed, this Court is of an opinion that the writ petitioner is an Institution having multi fold facilities inside the Campus. This Court cannot grant a total exemption from payment of property tax. If there is any building which is specifically be exempted, appropriate application is to be filed before the competent authority.

9. Even recently, the Hon'ble Supreme Court of India in the case of ***Commissioner of Customs Vs. Dhilipkumar and Company*** reported in ***2018 SCC Online SC 747*** held that in such under such circumstances, where the benefit of doubt raises, the same should be held in favour of the revenue and not in favour of the assessee.

10. When the Constitutional court is of an opinion that when there is a possibility of two interpretation, then the benefit should go to the revenue and by applying the same principles, this Court is of an opinion that Section 101 of the Chennai Corporation Act cannot be made applicable, in the absence of any specific orders in relation to the grant of exemption to the petitioner Institution. Even otherwise, Section 414 (A) deals with the Transitional provisions which states that all the buildings which were assessed by the erstwhile Municipality / Panchayat, the tax can be collected by the Chennai Corporation in view of the facts and circumstances, the writ petitioner has not made out any acceptable ground fro grant of exemption from payment of property tax.

11. The learned counsel appearing for the respondent brought to the notice of this Court that the writ petitioner is liable to pay the property tax arrears of Rs.4,93,78,713/-

12. Payment of property tax is a duty of the citizen. Every citizen are utilizing common infrastructure facilities and amenities provided by the Greater Chennai Corporation. When the Citizens are utilizing all such common amenities provided by the State and the Corporation, they are bound to pay the property tax within the time stipulated. Non payment of property tax is to be construed as an infringement of right of all other citizens residing within the jurisdiction of Chennai city. In the event of utilising all such common facilities without paying the property tax, the assesse should remind himself that he is utilising all such amenities at the cost of other tax payers, who are all promptly paying the property tax. All responsible citizens should realize that they are not supposed to enjoy all such amenities and infrastructural facilities at the cost of other tax payers who are promptly paying the property tax. Thus, non-payment of property tax infringes the rights of all citizen who are residing within the jurisdiction of Chennai City. This being the principles to be adjudicated, the writ petitioner is liable to pay the assessed property tax. If there is any discrepancy in respect of certain factual aspects, the writ petitioner has to produce evidences by filing an appeal before the appellate authority for redressing the grievances. However, these factual disputes cannot be adjudicated in the present writ petition. Accordingly, the following orders

are passed:

1. The relief as such sought for in this writ petition stands rejected.
2. The writ petitioner is directed to pay the property tax arrears amount of Rs.4,93,78,713/- within a period of eight (8) weeks from the date of receipt of a copy of this order.
3. The respondents are directed to adjust the amount, if any, already paid by the writ petitioner.

13. In the event of not paying the arrears of property tax within the time limit stipulated above, the respondent Corporation is directed to initiate all further proceedings to recover the entire property tax arrears by following the procedures contemplated under law.

14. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

10.10.2018

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Internet:Yes/No
Index : Yes/No
Speaking/Non speaking order

To

1. The Secretary,
   Municipal Administration and Water Supply Department,
   For St.George,
   Chennai – 600 009.

2. The Commissioner,
   Greater Chennai Corporation,
   Chennai – 600 003.

3. The Deputy Commissioner (R&F),
   Greater Chennai Corporation,
   Ripon Buildings,
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4. The Zonal Officer,
   Zonal Officer-XI,
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   123, Arcot Road, Valasaravakkam,
   Chennai – 600 087.

S.M.SUBRAMANIAM, J.
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